

STATUTE IN REVIEW

International Megan's Law

Public Law 114-119

Signed February 8, 2016

INTERNATIONAL MEGAN'S LAW

On February 8, 2016, President Obama signed the *International Megan's Law to Prevent Child Exploitation and Other Sexual Crimes Through Advanced Notification of Traveling Sex Offenders*.¹ More commonly referred to as "International Megan's Law" (IML), it contains a number of notable provisions. What follows is a brief summary of its most important sections.

ANGEL WATCH CENTER

Using its administrative authority, the Department of Homeland Security has run the Operation Angel Watch program since 2007.² It is headed by Immigration and Customs Enforcement's (ICE) Child Exploitation Investigations Unit (CEIU), and IML provides specific statutory authority for Angel Watch to engage in certain activities. Generally speaking, Angel Watch receives information about the intended travel of individuals through Customs and Border Protection's (CBP) National Targeting Center (NTC), and does not receive notice of international travel from individual offenders or jurisdictional registration officials.³

IML specifically authorizes Angel Watch to determine if any person who intends to travel internationally is a registered sex offender based on a conviction for a sex offense against a minor. If Angel Watch determines that a person fits that definition, Angel Watch is authorized to send any relevant information about that individual to the destination country where that individual is travelling. As part of this process, Angel Watch is also required to consult with DOJ's National Sex Offender Targeting Center (below) in order to determine whether or not the individual is in compliance with their sex offender registration responsibilities.

NATIONAL SEX OFFENDER TARGETING CENTER

In 2011, the SORNA Supplemental Guidelines were issued by the Department of Justice, and added a requirement to SORNA's baseline standards that jurisdictions were required to have their offenders inform them of any intended international travel at least 21 days prior to that travel taking place.⁴ Per these standards, offenders are to provide authorities with information regarding their itinerary and intended destinations, among other items, and registration jurisdictions are required to provide this information to the National Sex Offender Targeting Center (NSOTC) of the United States Marshals Service.

IML codifies this requirement in general terms (as described below), and specifically authorizes NSOTC to (1) provide notice to a destination country regarding any person who is a sex offender as defined in SORNA, who is required to register under the sex offender registration program of any jurisdiction, or who is included in the National Sex Offender Registry, and (2) share information relating to such traveling offenders with other federal, state, local, and foreign agencies, as appropriate.

SEX OFFENDER NOTIFICATION OF INTERNATIONAL TRAVEL

IML specifically amends SORNA (42 U.S.C. §16914(a)) to require sex offenders to provide certain information about their "intended travel...outside of the United States" and to comply with the Attorney General's directions about the time and manner for reporting such information. This provides a more explicit statutory basis for the already-existing SORNA requirements found in the Supplemental Guidelines.

AMENDMENT TO 18 U.S.C. §2250

IML amends the federal failure to register statute, 18 U.S.C. §2250, to cover and criminalize situations where an individual has failed to provide the advance notice of international travel as required by the SORNA amendments above.

PASSPORT IDENTIFIERS FOR SEX OFFENDERS

IML provides that the State Department shall not issue a passport to a ‘covered sex offender’ unless the passport contains a ‘unique identifier’. Broadly speaking, this provision is applicable to anyone who is currently required to register as a sex offender based on a conviction for a sex offense against a minor.

IML directs the State Department, DOJ, and DHS to develop a plan to implement the Passport Marking provisions of IML and submit it to certain congressional committees. The passport marking provision will become effective upon certification by State, DHS, and DOJ that the plan submitted has been successfully implemented. Future issues of *SMARTWatch Dispatch* will describe significant milestones in the passport marking process as it develops.

PRACTICAL IMPLICATIONS

There are numerous practical implications flowing from the enactment of IML.

Does IML Change SORNA’s Substantial Implementation Requirements for Jurisdictions?

For the purposes of substantial implementation, the requirements for international travel notifications, as previously laid out in the Supplemental Guidelines, will continue to govern. Practitioners should be advised, however, that because of Congress’ specific placement of the offenders’ requirement to provide advance notice of international travel in the text of SORNA’s statutory

requirements via IML, the SMART Office will be taking a particularly detailed look at jurisdictions’ policies and procedures regarding international travel notifications in the course of conducting any review of whether a jurisdiction has substantially implemented—or continues to substantially implement—SORNA.

Can the SMART Office Process a Sex Offender’s Notice of International Travel?

The SMART Office is not authorized to collect or receive notifications of international travel from anyone, including individual offenders, attorneys, or registration officials. If an offender wishes to make a notification of international travel pursuant to IML’s statutory requirements, that offender must report it to his or her registration agency.

Can the SMART Office Advise a Sex Offender about Whether He or She Has to Provide Notice of International Travel?

The SMART Office cannot provide any legal advice as to whether an individual is required to provide advance notice of international travel based on the provisions contained in IML. Offenders concerned about the application of IML to their particular circumstances are encouraged to contact their local registry officials and/or an attorney for specific legal advice.

The SMART Office also cannot provide any legal advice as to whether an individual convicted of a sex offense is required to register, or whether a particular jurisdiction requires advance notice of international travel.

Will a Sex Offender Be Prevented from Entering Other Countries?

Foreign governments make their own decisions, and set their own standards, on who they will, or will not, admit for entry to their country. Denials of entry can be for any reason, including—but not limited to—an individual’s previous criminal history. Offenders planning on traveling internationally may wish to check with the appropriate foreign Embassy or Consulate before departure about their specific circumstances.

¹ International Megan’s Law to Prevent Child Exploitation and Other Sexual Crimes Through Advanced Notification of Traveling Sex Offenders, Pub. L. No. 114-119 (Feb. 8, 2016), *available at* <https://www.congress.gov/114/bills/hr/515/BILLS-114hr515enr.pdf>.

² News Release, *ICE Authorized to Create Angel Watch Center*, <https://www.ice.gov/news/releases/ice-authorized-create-angel-watch-center-expand-child-protection-efforts-following> (Feb. 9, 2016).

³ GAO-13-200, REGISTERED SEX OFFENDERS: SHARING MORE INFORMATION WILL ENABLE FEDERAL AGENCIES TO IMPROVE NOTIFICATIONS OF SEX OFFENDERS’ INTERNATIONAL TRAVEL, (2013), <http://www.gao.gov/assets/660/652194.pdf>.

⁴ Supplemental Guidelines for Sex Offender Registration and Notification, 76 Fed. Reg. 1630 (Jan. 11, 2011).